WP(C) 1050/2007
BEFORE
HON'BLE JUSTICE B.K. SHARMA

Both the writ petitions relate to constitution of the interim council of Deloris Autonomous Council (DAC). The writ petitions have been heard together and are being disposed of by this common judgment and order. Both the writ petitions have been filed by the interim council of DAC represented by its Chief Executive Member who was appointed as such by order dated 14.10.05. The challenge made in the writ petition is the order dated 25.04.07 by which the earlier interim council represented by the petitioner has been dissolved and the new council has been constituted.

2. With a view to provide more power to different tribal and ethnic groups in Assam, it was felt expedient to set up an administrative authority for the areas predominantly inhabited by the Tribes called Deori. Pursuant to negotiation etc. Deori Accord was signed by and between the parties involved therein. The Accord was signed on 04.03.05.

3. In the Accord various provisions have been made towards constitution of DAC and DVC (Deory Village Council). Procedure etc. for constitution of the same has also been laid down with indication of power etc vested on it. As per clause-8 of the Accord, the Govt. of Assam shall constitute an interim council which shall continue till election of the council takes place. The election was to be held within six months from the date of signing the Accord. After promulgating the memorandum of understanding (Deori Accord) on 04.03.05, the State Legislature legislated the Deory Autonomous Act, 2005 and the same was published in the Assam Gazatte Extraordinary on 17.05.05. Section 80 of the Act makes provision for transitional period. It provides that the Govt. shall, as soon as possible, takes steps for constitution of an interim Deori Executive Council by nomination until the General Council is constituted under the Act.

4. By Annexure-3 notification dated 14.10.05, the Govt. of Assam in the Department of Welfare of Plain Tribes and Backward Classes notified constitution of the interim council of the DAC with the members indicated therein. The petitioner was nominated as the Chief Executive Member. The members of the interim counsel took oath of office on 24.10.05. Soon thereafter, the husband of the petitioner was murdered on 03.01.06 which according to the petitioner was the act of the political adversaries. The first writ petition being W.P.(C) No. 1050/2007 was filed apprehending replacement of the members of the DAC by another set of members. According to the petitioner, there is no provision in the Act conferring any power on the Govt. to reconstitute the interim council and that the interim council is to continue till holding of the election as per the provision of the Act. In this connection, the petitioner has referred to the aforesaid paragraph-8 of the Deori Accord.

5. The first writ petition was entertained by order dated 05.03.07 and it was provided that the status quo as on the date of passing of the order in respect of interim DAC should be maintained. By Annexure-5 communication dated 05.03.07 issued by the Commissioner and Secretary to the Govt. of Assam in the WPT & BC, requested the Deputy Commissioner, Lakhimpur to stop utilization of the fund of DAC released by the Govt. during 2006-2007 until further order of the Govt. Such a course of action was adopted in view of the aforesaid interim order passed by this Court. The communication indicated about the decision of the Govt. to dissolve the interim council represented by the petitioner.

6. When the matter rested thus, the first writ petition was taken up for further order on 05.04.07 and this Court noticing the earlier judgment of this Court declined to continue the earlier interim order. However, liberty was granted

to the petitioner to assail the legality and validity of the order, if passed, reconstituting the DAC.

7. After the aforesaid order passed by this Court on 05.04.07, the Govt. of Assam in the concerned department issued the impugned notification dated 25.04.07 reconstituting the interim Executive Council of DAC with the persons named in the notification. By the said notification, the earlier interim council constituted by notification dated 14.10.05 has been dissolved. Being aggrieved, the petitioners have filed the second writ petition.

8. Counter affidavits have been filed by the respondents supporting the impugned notification. According to the respondents there is no nexus between the death of the husband of the petitioner and dissolution of the earlier interim council and its replacement by the new council. According to the respondents the functioning of the earlier DAC was highly unsatisfactory and there was complaints relating to corruption, misuse of funds and non performance etc. from the various organizations against the said interim council.

9. In view of the complains against the earlier interim council, the Govt. convened a meeting of the MLAs governing the DAC areas and the representatives of the Deori Students Unions, Deori Sahitya Sabha etc. on 03.11.06 under the Chairmanship of the Minister of WPT & BC. Unanimous view was expressed by the participants present in the meeting that the interim council had frustrated the expectation and aspirations of the Deori community. Taking into account such displeasure expressed by the members in the meeting, the State Govt. constituted a fresh interim council taking recourse to Section 80 of the Act. According to the respondents, holding of election for constitution of a regular council, is not immediately possible.

10. Mr. A.M. Majumdar, learned Sr. counsel assistted by Mr. S.S. Dey, and Mr. M. Nath, learned counsel for the petitioner primarily argued in reference to clause 8 of the Deori Accord and Section 80 of the Act. According to him, the interim council represented by the petitioner is to continue till such time the election to the council takes place. He further submitted that Section 80 of the Act does not empower the Govt. to dissolve the interim council so as to constitute another interim council.

11. Mr. A.K. Phukan, learned Advocate General, Assam assistted by Mr. R.K. Borah, learned State counsel on the other hand supporting the impugned action of the Govt., submitted that the Govt. being vested with the power and jurisdiction as per the provisions of the Act having passed the impugned order, the writ Court exercising its power of judicial review under Article 226 of the Constitution of India will not interfere with the same. Expressing the same view, Mr. S. N. Sarma, learned Sr. counsel assisted by Mr. B. Buragohain, learned counsel representing the respondents No. 4 to 12, also submitted that the writ Court will be reluctant to interfere with the impugned notification in absence of any allegation of malafide and/or colourable exercise of power and/or violation of any statutory provisions of the Act.

12. The interim council represented by the petitioner was constituted by Annexure-3 notification dated 14.10.05. However, the same has been replaced by constituting the present council by Annexure-7 notification dated 25.04.07. The notification has been issued on the basis of the power conferred by Section 80 of the Act. Section 80 of the Act reads as follows:

80. The Government shall, as soon as possible, take steps for the constitution of an Interim Deori Executive Council by nomination until the General Council is constituted under this Act. The interim Executive Council shall, in addition, look after the duties of the Village councils till the same are constituted under this Act.

13. As per the aforesaid provision made in the Act, the Govt. is empowered to take steps for constitution of interim council by nomination until the General Council is constituted. While it is the stand of respondents that Section 80 empowers the Govt. to dissolve the interim council and to form another interim council, it is the stand of the petitioner that in absence of any specific provision to that effect, the Govt. cannot dissolve the council represented by the petitioner and constitute another one.

14. Mr. Majumdar, learned counsel for the petitioners has placed reliance on the amendment brought to Missing Autonomous Act, 1955 by the Amendment Act, 1997. Section 80 of the said Act, as it stood originally before the Amendment Act, 1997, contained similar clause as in the instant case. However, by the amendment brought in 1997, the Govt. was specially empowered to remove the members of the interim council to be replaced by others. According to Mr. Majumdar had it been the intention of the legislature in passing of the Deori Autonomous Council Act, passed much after Missing Autonomous Council Act, 1995 and the amendments made therein in 1997, certainly it would have incorporated the clause relating to dissolution of interim council and reconstitution of the same.

15. This Court while dealing with the interim prayer in the first writ petition, i.e. W.P.(C) No. 1050/2007 noticing the decision of the Apex Court as well as of this Court, declined to pass the interim order. The said decisions are:
1) (1993) 2 SCC 242 (Om Narain Agarwal vs. Nagar Palika Sangha Parishad)
2) 2006 (1) GLT 472 (State of Assam vs. Makhan Chandra Pegu)
3) 2007 2 GLR 7 : 2006 (3) GLT 832 (Mahesh Doley vs. State of Assam)

16. A little discussion of the said cases will be beneficial for resolving the issue relating to interpretation of Section 80 of the Act. In the case of Om Narain Agarwal (supra), the Apex Court dealing with Pleasure Doctrine in respect of the nominated members of the Municipal Corporation and referring to the provision relating to removal of the nominated members, held that the nominated members constitute a separate class whose induction and removal are dependent upon the pleasure of the State Govt. which was based on political consideration. It was also held that the nominated members are not entitled for affording any opportunity before their removal in compliance of the principle of natural justice. It was also noticed that removal of the nominated members did not put any stigma on their performance or character.

17. In the case of Mahesh Doely (supra), the Division Bench of this Court dealing with the question of removal and replacement of interim General Council relating to Missing Autonomous Council, while upholding the same, observed that the Doctrine of Pleasure is dully incorporated and implicit in Section 80 of the Act. Referring to the decision in Makhan Chandra Pegu (supra), it has been observed that the issue is no longer res integra. In paragraph -8 of the judgment of the Division Bench observed thus,

> 8. This Court further held that the doctrine of pleasure is duly incorporated and implicit in Section 80 as well as in proviso to it. Relying on the decision of the Supreme Court in Krishna vs. State of Maharastra (2001) 2 SCC 441, the Division Bench took the view that once the doctrine of pleasure is applicable, neither the principles of natural justice would step in nor any question of giving an opportunity before removal would arise. It is also held that the pleasure of the Government is in no way controlled by any of the provision under the Stature with which we are concerned for the present.
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> (Emphasis added)

18. In Krishna vs. State of Maharashtra reported in (2001) 2 SCC 441, the Apex Court while interpreting the provisions of the particular Act, took a view that once the Doctrine of Pleasure is applicable neither the principle of natural justice would step in nor any question of giving opportunity before removal wou

ld arise.

19. In the decisions referred to above, this Court emphasizes that the Doctr ine of Pleasure is inbuilt in the provisions like that of one centering around w hich the controversy has been raised.

20. Ordinarily, the pleasure doctrine comes into play when the appointment of a Crown servant is terminated. Lord Diplock in Chelliah Kodeeswaran v. Attor ney General of Ceylon, AC at p. 1118, stated the English law as follows:
It is now well established in British constitutional theory, at any rate as it has developed since the eighteenth century, that any appointment as a Crown ser vant, however subordinate, is terminable at will unless it is expressly otherwis e provided by legislation.

21. the constitutional protection and privileges available under Article 311 to a person who holds a civil post under the Union or States are not applicable to a member of a Council who is nominated by the Governor.

22. This Court in Rash Lal Yadav (Dr.) v. State of Bihar held that the princ iples of natural justice are not applicable in the absence of express words. Tha t was a case where the removal from the Chairmanship of the Bihar Schools Board was challenged. Relying on an earlier decision in A.K. Kraipak v. Union of India it was held that if the statute, expressly or by necessary implication, omits t he application of the rule of natural justice, the statue will not be invalidate d for this omission on the ground of arbitrariness.

23. Therefore, the contention of the petitioner that the members of the coun cil were not heard before their nomination/appointment was terminated and hence illegal, cannot be accepted, as they held their office at the pleasure of the Go vernor.

24. Section 80 of the Act although does not specifically provide as in the c ase of Missing Autonomous Council Act, 1995 for removal of the members of the in terim council to be replaced by other persons, but such power and jurisdiction o f the Govt. are implicit. If the power to constitute an interim Executive Counci l is vested with the Govt., it is also vested with the power to dissolve the sam e so as to constitute another council. Section 80 does not debar the Govt. from dissolving the interim council and replacing the same by another council. Once t he Doctrine of Pleasure is applied, the petitioners cannot take the plea that t hey must be allowed to continue till such time the General council is constitute d under the Act. As has been disclosed in the affidavit, there are reasons towar ds reconstitution of the interim council and such reasons cannot be said to be i rrational and/or arbitrary. The earlier interim council was not constituted by w ay of any election, but was constituted out of political consideration. If that be so, the political consideration will weigh against the grounds which has been urged by the writ petitioner.

25. During the course of hearing, Mr. Phukan, learned Advocate General submi tted that the Govt. is kin to hold the election of the Deori Autonomous Council. As regards the delay in holding the same, he emphasized on the difficulty being faced by the Govt. One such difficulty is stated to be identification of proper limits and territory of the council. He submitted that the Govt. is committed t o hold the election. According to him the election to DAC will be held after the Panchayat Election scheduled to be held on October, 2007.

26. While upholding the decision of the Govt. towards constitution of the i nterim council by the impugned notification dated 25.04.07 by way of replacemen t of the earlier interim council, it is hereby provided that the Govt. instead o f managing the affairs of the DAC through interim council will hold the election towards constitution of full fledged council as envisaged under the Act as expe

ditiously as possible, but at any rate not later than 31st January, 2008.

27. Subject to the aforesaid directions and observations, both the writ petition are dismissed. However, there shall be no order as to costs.